



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2006 MAR -6 PM 12:38

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: RCRA-08-2005-0003

IN THE MATTER OF:

TEXAS MEXICAN RAILWAY COMPANY,
A TEXAS CORPORATION

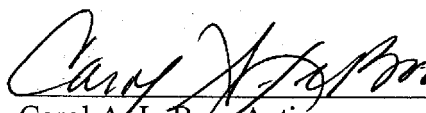
RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

3-6-06
DATE


Carol A. LeBoe, Acting
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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|--------------------------------|---|--------------------------|
| In the Matter of: |) | |
| |) | |
| Texas Mexican Railway Company, |) | CONSENT AGREEMENT |
| a Texas corporation |) | |
| |) | |
| Respondent. |) | |

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent Texas Mexican Railway Company (Texas Mexican) by their undersigned representatives, hereby consent and agree as follows.

BACKGROUND

1. EPA issued to Texas Mexican a Complaint, Compliance Order, and Notice of Opportunity for Hearing (complaint) filed on September 28, 2005, alleging the violation of section 335.11(g)(1) of the Texas Administrative Code for failing on 389 hazardous waste manifests to indicate the date certain shipments of hazardous waste left the United States.
2. Subsequent to the issuance of the complaint, EPA became aware that 56 of the 389 hazardous waste manifests were, in fact, dated properly. Had EPA considered this information prior to issuing the complaint, the proposed penalty would have been reduced.

3. To resolve this matter, the parties agree to a settlement requiring the expenditure by Texas Mexican of a payment in the amount of \$22,176.00 (twenty two thousand one hundred and seventy six dollars). EPA finds this penalty amount is appropriate, taking into consideration the statutory factors in section 3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3), EPA's RCRA Civil Penalty Policy (June 2003) and other mitigating factors.

The penalty shall not be tax deductible by Texas Mexican.
4. Texas Mexican admits that EPA has the jurisdictional authority to issue the complaint and settle this case pursuant to this Consent Agreement, but does not confirm nor deny the remaining allegations, including the findings and alleged violations.
5. This Consent Agreement applies to and is binding upon EPA and upon Texas Mexican and Texas Mexican's successors and assigns. Any change in ownership or corporate status of Texas Mexican including, but not limited to, any transfer of assets of real or personal property shall not alter Texas Mexican's responsibilities under this agreement.
6. Texas Mexican knowingly waives its right to a hearing on or appeal of any issue of law or fact set forth in the complaint.

TERMS OF SETTLEMENT

Civil Penalty

7. Texas Mexican consents to the issuance of the Consent Agreement and for the purposes of settlement to the payment of the above-cited civil penalty.

8. Texas Mexican shall, not more than 30 (thirty) calendar days after the date of the signed Final Order in this matter, submit a cashier's or certified check in the amount of amount of \$22,176.00 (twenty two thousand one hundred and seventy six dollars), payable to "Treasurer, United States of America" to:

EPA - Region 8
Regional Hearing Clerk
Post Office Box 360859
Pittsburgh, Pennsylvania 15251.

9. A copy of the check identified in paragraph 8 shall be simultaneously mailed to the following addresses:

Tina Artemis, Regional Hearing Clerk
U.S. EPA, Region 8 (8RC)
999 18th Street, Suite 300
Denver, Colorado 80202-2466 and

Jim Eppers, Senior Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

10. Rather than paying the penalty by check as described in paragraphs 8 and 9 above, Respondent may pay the penalty by using a wire transfer. In that case, payment shall, pursuant to the same time requirements, be made payable to "Treasurer, United States of America" and wired directly to the Federal Reserve Bank in New York City, New York, with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF = /AC- 68011008.

11. Texas Mexican further agrees and consents that if Texas Mexican fails to pay the penalty

in accordance with the terms of paragraph 8, the amount of \$37,290.00 (thirty seven thousand two hundred and ninety dollars) less any payments made, if any, shall be due and owing. Interest on this amount shall accrue at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717. A late payment charge of twenty dollars (\$20.00) shall be imposed after the first 30 calendar days that the payment, or any portion thereof, is overdue, with an additional charge of fifteen dollars (\$15.00) imposed for each subsequent 30-day period until the payment due is made.

Compliance Requirements

12. Within thirty (30) days of receipt of the Final Order in this matter, Texas Mexican shall submit to EPA a written, detailed description of the steps that will be taken to ensure its future compliance with section 335.11(g)(1) of the Texas Administrative Code (accompanied by a copy of any appropriate supporting documentation), and written confirmation of its compliance with those requirements. The submission referred to above shall be sent to:

Eric Johnson 8ENF-RC
Technical Enforcement Program
U. S. Environmental Protection Agency, Region 8
999 18th Street Suite 300
Denver, CO 80202-2466.

GENERAL PROVISIONS

13. This Consent Agreement contains all the terms of the settlement agreed to by the parties.
14. Nothing in this Consent Agreement shall relieve Texas Mexican of the duty to comply with the Texas Solid Waste Disposal Act and its implementing regulations or of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), or RCRA's implementing regulations.
15. Failure by Texas Mexican to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
16. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Texas Mexican's failure to perform pursuant to the terms of this Agreement.
17. The undersigned representative of Texas Mexican certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Texas Mexican to those terms and conditions.
18. Each party shall bear its own costs and attorneys fees in connection with this matter.
19. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
20. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial

Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint.

Texas Mexican Railway Company

Date: _____ By: Robert B. Terry

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8

Date: 2/27/06 By: Carol Rushin
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice


CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **TEXAS MEXICAN RAILWAY CO., DOCKET NO.: RCRA-08-2005-0003** was filed with the Regional Hearing Clerk on March 6, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to James Eppers, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on March 6, 2006 to:

Stacy J. Stotts
Stinson, Morrison, Hecker LLP
1201 Walnut, Suite 2900
Kansas City, MO 64106-2150

March 6, 2006



Tina Artemis
Regional Hearing Clerk